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Paper No. 8

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**APR 26 2004**

**OFFICE OF PETITIONS**

In re Application of :  
Francis X. Smith :  
Application No. 09/706,318 :  
Filed: November 4, 2000 :  
Attorney Docket No. 90337.032702 :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed December 15, 2003, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D). The instant petition lacks item(s) (1).

A Final Rejection was mailed to applicant on June 5, 2002, setting a three-month shortened statutory period within which to submit a reply. Since no reply was received and no extensions of time under the provisions of 37 CFR 1.136 were obtained, the application became abandoned on September 6, 2002.

Petitioner states in the present petition that no reply was filed because the Office action was never received. In view thereof, a copy of the Office action is attached herewith. The proposed reply for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 1.17(b)), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination (RCE) and requisite submission under 37 CFR 1.114, or the filing of a continuing application. See MPEP 711.03(c)(III)(A)(2). The application cannot be revived until a proper reply is received.

Further correspondence with respect to this matter should be addressed as follows:

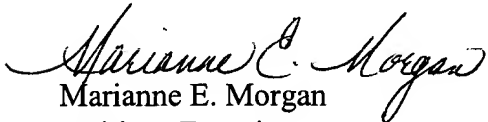
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Telephone inquiries concerning this decision should be directed to the undersigned at (703) 306-3475.



Marianne E. Morgan  
Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

Attachment: Copy of Final Office Action mailed June 5, 2002